IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3908 of 2001

WITH

SPECIAL CIVIL APPLICATION NO. 3912 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABURAM BANSANIDHI SHAHU

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3908 of 2001
MS SUBHADRA G PATEL for Petitioner No. 1
MR K.T.DAVE, AGP for Respondents No. 1-3

2. Special Civil Application No. 3912 of 2001
MS SUBHADRA G PATEL for Petitioner No.1
MR K.T.DAVE, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/10/2001

COMMON ORAL JUDGEMENT

Since common question of law and facts are involved in both the above mentioned petitions and both the petitioners are co-detenu as they are detained on the same grounds by the same detaining authority, both the petitions are heard together and disposed of by this common judgement.

2. In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Surat City, Surat, vide order dated March 18, 2001, (Annexure-A to the petition) detained the petitioners/detenues.

3. The averments made in the petition and the grounds of detention order dated March 18, 2001 manifest that the petitioners are prohibition bootleggers within the meaning of Section 2(b) of the Act as two cases under the prohibition Act are registered against them which are pending for trial. Besides this, statements of two anonymous witnesses are recorded, therefore, according to the detaining authority their activities are prejudicial to the maintenance of public order and by exercising power under Section 9(2) of the Act by not disclosing the identities of the witnesses the detaining authority passed the impugned orders of detention and detained the petitioners/detenues.

4. By filing this petition under Article 226 of the Constitution, the petitioners have assailed the impugned orders of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and setting them at liberty forthwith.

5. The petitioners have challenged the orders of detention on various grounds. Ms. Subhadra Patel, learned advocate for the petitioners has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. Besides this, she contended that there is abnormal delay in considering the representations made by both the petitioners and, therefore, continued detention of the petitioners is to be held illegal and on this sole count, the orders of detention deserve to be quashed and set aside by allowing the petitions. To buttress her aforesaid submission, she drew the attention of this Court to the fact that both the petitioners have made representations on April 24,

2001 and so far as the representation made by the petitioner of Special Civil Application No.(SCA) 3980 of 2001 is concerned, it was decided by the detaining authority on May 3, 2001 by rejecting the same whereas the representation made by the petitioner of SCA No. 3912 of 2001 is concerned, it was received by the detaining authority on June 7, 2001 and ultimately, it was decided on June 18, 2001 and therefore, there is abnormal delay of more than two months in deciding the representation made by the petitioner of SCA No. 3912 of 2001 and, therefore, on the sole ground of delay in considering the representation, the petitions deserve to be allowed by setting aside the orders of detention and setting both the petitioners at liberty forthwith.

6. Mr. K.T.Dave, learned AGP appeared on behalf of the respondent State and has opposed the petitions by making his oral submissions. He, however, does not dispute the factual aspect of making representation by both the petitioners on the same day and rejecting the representation of both the petitioners on different dates. According to him, so far as the petitioner of SCA No. 3908 of 2001 is concerned, his representation was decided in time and therefore, he is not entitled to get the benefit on the ground of delay in considering the representation. He, however, conceded that there is a gross delay in deciding the representation made by petitioner of SCA No. 3912 of 2001 and therefore, he is entitled to the benefit of gross delay and therefore, he urged to pass appropriate order in this regard.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petitions as well as the original file which has been supplied by the learned AGP during the course of his submissions. On having perusal of the original file, it seems that there is no dispute that both the petitioners have made representations on April 24, 2001 but, representations of both the petitioners were decided on different dates. So far as the petitioner of SCA No. 3908 of 2001 is concerned, his representation came to be rejected on May 3, 2001 whereas the representation made by the petitioner of SCA No. 3912 of 2001 came to be rejected on June 18, 2001. It may be noted that both the petitioners are co-detenues and they made representations on the same day. But no explanation is forthcoming as to why there is a delay in deciding the representation made by the petitioner of SCA No. 3912 of 2001. It appears that there is a gross delay in considering the representation made by the petitioner of SCA No. 3912 of 2001.

8. A similar question arose before the Supreme Court in the case of HARISH PAHWA V. STATE OF U.P. AND OTHERS AIR 1981 (SC) 1126, wherein the Supreme Court has held that the representation made by the detenu has to be considered without any delay. Supreme Court does not look with the equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of the Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. It is the duty of State to proceed to determine the representations with utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done, the detention has to be declared unconstitutional.

9. Applying the principle laid down by the Supreme Court to the facts of the present case, it is clear that both the petitioners are co-detenu and they made representations on the same date, and the representation made by the petitioner of Special Civil Application No. 3912 of 2001 has been rejected after a period of two months and therefore, there is abnormal delay and on this ground, both the petitioners deserve same treatment and hence, the orders of detention stand vitiated and the petitions deserve to be allowed.

10. For the foregoing reasons, both the petitions succeed and are accordingly allowed. The impugned orders of detention dated March 18, 2001 are hereby quashed and set aside. The petitioners/detenues are ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*